AMHERST PLANNING BOARD Wednesday, April 16, 2008 – 7:00 PM Town Room, Town Hall MINUTES

PRESENT: Aaron Hayden, Chair; Richard Howland, Jonathan O'Keeffe,

Eduardo Suarez, Denise Barberet, Jonathan Shefftz (7:18 PM),

Kathleen Anderson (7:31 PM)

ABSENT: Susan Pynchon, Ludmilla Pavlova-Gillham

STAFF: Jonathan Tucker, Planning Director; Christine Brestrup, Senior Planner

Mr. Hayden opened the meeting at 7:17 PM.

Mr. Hayden proceeded directly to public hearings.

II. PUBLIC HEARINGS – ZONING AMENDMENTS

Mr. Hayden read the preamble and opened the public hearing for the following:

A-16-08 Main/Dickinson/High Street Rezoning (petition)

To see if the Town will amend the Official Zoning Map to change the zoning designation for the following parcels, all on Assessor's Map 14B:

Parcel 28 – Rezone from R-G to B-VC, contingent upon town meeting voting to authorize the Select Board to accept a restrictive covenant foregoing some uses allowed in the B-VC District; Parcels 59 and 128 – Rezone from COM to B-VC:

Parcel 66 – Rezone from R-G to B-VC, contingent upon town meeting voting to authorize the Select Board to accept a restrictive covenant limiting future use of the property to the current use; Parcels 129 and 234 – Rezone from COM and R-G to B-VC;

Parcel 131 – Rezone the northerly portion of the parcel excluding the portion subtended by the frontage on Railroad Street from R-G to B-VC.

Mr. Vince O'Connor, petitioner, of 179 Summer Street, described the rezoning proposal. He noted that there had been previous rezoning efforts directed at this area of town. With the current petition Mr. O'Connor was trying to accommodate the needs of the tenants of the building across from the Dickinson Museum, to allow them to change uses without having to go through the Special Permit process, and responding to Mr. Guidera's request to rezone his property at 446 Main Street. The current petition is an attempt to simplify previous rezoning efforts.

Mr. O'Connor stated that, after the discussion at the Zoning Subcommittee meeting earlier in the evening, he was confident that the rezoning of this area of town would be a priority for the Zoning Subcommittee and the Planning Board for the Fall 2008 Special Town Meeting. Mr. O'Connor stated that he is satisfied that referral to the Planning Board is the appropriate recommendation to bring to Town Meeting.

Mr. Hayden commented that the Zoning Subcommittee has been grappling with the issues related to this area of town for a long time. He stated that the Zoning Subcommittee had voted to recommend to the Planning Board to recommend to Town Meeting that this article be referred back to the Planning Board for consideration again in the fall.

Mr. Hayden noted that this area is a unique area in town and includes a Historic District, the remnants of a dense commercial district dating from just after the Civil War, zoning that was put in place in the mid-1970's, a highly traveled road, the oldest subdivision in Amherst, as well as other residential and commercial interests. He is optimistic that a new type of zoning, a "Neighborhood Business" (B-N) zone, can be developed to create a balance between the more intense uses and the less intense uses in this area.

Mr. Suarez stated that he would like to see a community-driven process to determine how the community would like to see its neighborhood in the future.

Mr. Hayden stated that there have been and will be public meetings. The Planning Board is aware that the public process is very important.

Mr. Howland stated that he is dismayed that the Planning Board is being asked to look at this rezoning in light of the fact that a Comprehensive Plan is about to be brought forth. He stated that the town is going to be adding and changing districts, and possibly revising the whole zoning bylaw. This is not the time for a proposal to rezone one area of town. He would like Town Meeting to dismiss this article so that the Planning Board can do the work that it needs to do with respect to the Comprehensive Plan. This may be a good idea, but it is the wrong time to consider it, he said.

Mr. Suarez agreed that there was a large amount of work before the Planning Board, but he noted that the Master Plan is not a binding document. It may give the Board some guidance but the Planning Board should go ahead with the process to consider rezoning of this area.

Mr. Tucker noted that the actual deadline for the Comprehensive Plan is November 2009, and by that time the Town will need to have removed the Phased Growth Bylaw and perhaps have replaced it with something else. There is a sunset date built into the Phased Growth Bylaw. He explained that funding had been requested, for FY2009, to rewrite the Zoning Bylaw and re-do the Zoning Map, but that the funding for this project had been pushed out to FY2010 due to budget constraints.

Susan Barbaro of 46 High Street stated that she was relieved that the Planning Board will be postponing decisions regarding this neighborhood. She and the neighbors have questions and concerns, some of which relate to the Historic District and the former Boys and Girls Club. She likes the idea of a more comprehensive planning effort for this area and would not like to see spot zoning of particular properties.

Michael Raab of 576 Main Street asked about the proposed restrictive covenants for the property known as Parcel 28 (at the corner of Main Street and Dickinson Street).

Mr. Hayden stated that the proposal points out that the range of uses available in the B-VC District is not appropriate for this part of town. The proposal for a restrictive covenant on certain properties would limit the uses that could occur on the parcel, even though the uses may be allowed in the B-VC District.

Mr. Suarez stated that the Planning Board would hold between one and three meetings with the neighborhood to discuss rezoning this area. The Planning Department can help with the process and the meetings will help to determine what can and what cannot be done here.

Mr. Tucker clarified the process, explaining that the Planning Board is holding a public hearing to get responses from the public on what is being proposed in this petition article, in order for the Planning Board to formulate a recommendation to Town Meeting. According to state law the Planning Board must review zoning proposals, it must hold a public hearing to hear from the public

about zoning proposals and it must make a recommendation to Town Meeting regarding zoning proposals. He noted that Town Meeting starts on April 28th.

Maureen Raab of 576 Main Street asked about what would happen to her property in the future. She wants to retain the neighborhood character of the area and not have the residential aspect become obsolete. She stated that this is a historic neighborhood and that people have lived here for a long time.

Mr. O'Connor stated that the reduced scope of this proposal was intended to retain the residential aspects of this area. He noted that three properties on High Street, below the railroad tracks need to be considered. High Street is a primary route to the Middle School. School buses use this intersection. Commercial uses are not appropriate at the intersection of Main Street and High Street, he said.

Mr. Howland MOVED: to close the hearing on the petition article. Mr. Suarez seconded and the Motion passed 7-0.

Mr. Shefftz asked how a restrictive covenant would work.

Mr. Tucker explained that covenants are sometimes referred to as "contract zoning". With a covenant, the Town would negotiate with the owner with regard to which uses could occur on a particular parcel. There could be a deed restriction placed on the property, but such a restriction would need to be accepted by Town Meeting. If there is a negotiated agreement, without a deed restriction, then the agreement does not need to go to Town Meeting.

Mr. Shefftz noted that the owners of Parcels 28 and 66 would be under no obligation to negotiate with the Town. Mr. Tucker stated that the owner of Parcel 66 was the original petitioner regarding rezoning of part of this neighborhood. He also noted that Parcel 28 contains non-conforming uses. Therefore owners of both of these properties would have incentives to negotiate with the Town regarding proposed changes in uses allowed by zoning.

Mr. O'Keeffe MOVED: that the Planning Board recommend to Town Meeting that the article be referred back to the Planning Board. Mr. Suarez seconded, and the Motion passed 6-0-1 (Howland abstained).

III. PUBLIC HEARING – SITE PLAN REVIEW APPLICATION

SPR2008-00004, Amherst Enterprise Park – Andrews & LaVerdiere

Mr. Hayden read the preamble and opened the public hearing for this request to construct a 12,800 square foot, two-story wood-frame-construction office building with access drive and parking on 5.6 acres, on Meadow Street (Map 4D, Parcel 8, LI and FPC zoning districts).

Mr. Howland recused himself since he had had prior dealings with the property and with the current owners.

Bill Garrity of Garrity and Tripp presented the application. He gave a brief introduction to the project, noting that some of the Planning Board members had been present at a recent site visit. He referred to the SORAD line [representing a previously-approved 100-year flood line] which had expired and explained that the actual 100-year flood line is the 152.9 foot contour elevation line (mean seal level). He explained the proposed site plan, including stormwater management and water and sewer service. He noted that there are two zoning districts on the property – the LI District, which will contain the proposed building, and the FPC District, which will contain the parking. He stated that parking for a

use contained in the LI District is not usually allowed in another district. He stated that it can be allowed under a "special permit".

Mr. Garrity stated that field work for the flood storage management proposal has been completed. The new spot grades and test holes have determined that a slight rise in the elevation of the building and parking areas will be necessary. This change is due to new DEP [Department of Environmental Protection] regulations that require that detention basins need to be a certain distance above seasonal high groundwater. He doesn't expect that there will be horizontal changes to the plan, only vertical changes.

Mr. Garrity noted that in the existing condition, sight distances from both driveway locations onto Meadow Street are 400-500 feet in each direction. When the existing brush is removed the sight distances will increase to 500-800 feet at both driveways in each direction.

Mr. Garrity stated that a street light is proposed at each entrance. The proposed streetlights will be duplicates of those existing along Meadow Street. The applicants are willing to consider not installing any streetlights if that is what the Town prefers.

The on-site lighting will consist of "shoe-box" style lights that can be directed and screened. The mounting height can be addressed at a future meeting. The intent of these site lights and the building-mounted lights is that they be compatible with an office building use.

The proposal includes the planting of shade trees and shrubs as well as plantings in the rain garden. The shade trees will be Sugar Maples and Red Maples. The applicants wish to enhance local sugaring capacity and will allow neighboring farmers to hang buckets on the Sugar Maples to collect sap to make maple syrup. Although Sugar Maples can be subject to disease, the applicants are willing to plant and maintain them in order to support local maple syrup production.

The plan calls for a small caretaker apartment that can house a couple or a single person.

Mr. Tucker stated that a waiver under Section 7.9 rather than a "special permit" would be required to allow parking in the FPC District for an associated use in the LI District.

Acknowledging that there are likely to be changes to the plan because of new information, Mr. Tucker recommended that the Board continue the public hearing to June 4. He suggested that the Planning Board may wish to take general comments from the public with respect to the overall notion of the plan, but that comments related to specifics might be saved for the continued hearing.

Joe Waskiewicz, one of the owners of the farm located south of the applicants' property, stated that he was concerned about the setback distance from the corner of the proposed building to Meadow Street.

Ms. Anderson MOVED: to continue the public hearing to June 4, 2008.

Ms. Barberet suggested that members of the public should be allowed to speak very briefly.

Ruth Hazzard, a member of the Agricultural Commission, stated that the Commission had considered the proposed development at only one meeting. The Commission has not yet taken a position on the proposal. The Commission plans to invite farmers to its meeting in May to discuss the project. She stated that farmers have expressed concerns about the interaction of farm vehicles with traffic entering and exiting the two proposed driveways.

Mr. O'Keeffe seconded the motion and the Motion passed 6-0 to continue the hearing.

II. PUBLIC HEARINGS – ZONING AMENDMENTS (continued)

Mr. Hayden re-opened the public hearing for the following:

A-19-08 Inclusionary Zoning (Planning Board)

To amend Sections 3.32, 4.1, 10.323, 11.230 and Article 15 to require improved accessibility and increased recreation facilities for residential developments or land uses creating five or more new dwelling units, to provide for payments in lieu of providing recreation facilities, to improve permit coordination regarding recreation, and to require a percentage of the dwelling units required under inclusionary zoning to be eligible for MGL Ch. 40B SHI listing.

Mr. Hayden gave the report of the Zoning Subcommittee, stating that the Zoning Subcommittee had examined the language of Warrant Article 31, Inclusionary Zoning, and had drafted motions for the various parts as follows:

Motion #1, shall include the following:

Part A, but not including the last sentence shown in **bold italics** in the Warrant;

Part C; and

Part D.

Motion #2, shall include the following:

Part B, but not including Section 4.12 and 4.13 and not including the phrase in *bold italics* in paragraph 1.

Motion #3, shall include the following:

Refer Section 4.12 of Part B back to the Planning Board and Disability Access Advisory Committee for further study.

Motion #4, shall include the following:

Part E, except that the phrase in Section 15.10 "a minimum of fifty percent (50%) of affordable units" shall be changed to "a minimum of forty-nine (49%) of affordable units", with the caveat that the Housing Partnership/Fair Housing Committee provide documentation that it endorses the change.

Mr. Tucker explained that under Article 30, Mr. O'Connor will move to refer Section 15.14, regarding recreation, back to the Planning Board and LSSE Commission for further study. Mr. Tucker also noted that there are some jurisdictional issues related to Section 4.12. Town Counsel has advised that there may be an overlap between Section 4.12 and the Building Code and Town Counsel has advised against adopting Section 4.12 for that reason. State law does not allow Zoning Bylaws to regulate items that are already regulated by the Building Code.

Mr. Howland suggested recommending referral of the whole of Article 31 back to the Planning Board to minimize confusion at Town Meeting.

Mr. O'Connor stated that the daily motion sheet will help to make this a logical process for Town Meeting members. He noted that some of the proposed changes are only technical.

Mr. Tucker suggested that the Planning Board members could present the overall Article to Town Meeting in a conceptual framework prior to getting into the details of the motions. The conceptual framework could include the following major elements of both articles:

- Accessibility
- Visitability

- Recreation
- Inclusionary-Affordable Changes
- Technical Changes.

Mr. Tucker noted that the Planning Board would be recommending that two of these items be referred back to be considered at a later date.

Nancy Gregg, Chair of the Housing Partnership/Fair Housing Committee, apologized for not having a written report available for the Board, but promised that a written report would be delivered the next day. She stated that the HP/FHC had conducted a long discussion and had voted 4-0-1 (with one abstention) in support of the modified affordability proposal. This proposal would set aside a number of units for those people with incomes under 80% of the median area income and this number would be 49% of the total affordable units required, instead of 50%, as originally drafted.

Mr. Hayden stated that he would like to have a table showing how the 49% would translate into actual numbers.

Mr. O'Connor stated that he was happy with the reasonable solution of 49%. He thanked the HP/FHC for considering some number of units for people with the lowest level of income.

Mr. O'Connor also stated that he disagreed with Town Counsel's opinion with respect to Section 4.12. He stated that there is adequate language in Section 10.38 of the Zoning Bylaw which covers Special Permits, which could be construed to allow a Board to impose conditions with regard to "visitability". He stated that where 2 or 3 units are required to be fully-accessible a Board has the authority to impose a condition that the other units have ground-floor visitability.

Ms. Anderson MOVED: to close the public hearing. Mr. O'Keeffe seconded and the Motion passed 7-0.

Mr. O'Keeffe suggested that the Board consider each motion one by one. Mr. Hayden stated that the Board will need to vote on the Inclusionary Zoning Article, which now has 4 pieces.

Mr. Shefftz MOVED: to approve the Zoning Subcommittee recommendation regarding the composition of the motions for Article 31 as previously discussed and to recommend to Town Meeting that the Article be approved, as outlined in the motions.

Mr. Suarez seconded the Motion.

Mr. Hayden stated that Mr. Shefftz was suggesting that all the motions as stated previously are acceptable to the Board. Mr. Hayden stated that he would like to review the four (4) pieces of Article 31 before voting. He summarized the motions as follow:

Motion #1 – Parts A, C and D, less the last sentence in bold italics in Part A – recommend to Town Meeting to approve;

Motion #2 – Part B, less Section 4.12 and 4.13 and less the bold italics in the introductory paragraph – recommend to Town Meeting to approve;

Motion #3 – Section 4.12 of Part B – recommend to Town Meeting to refer back to the Planning Board;

Motion #4 – Part E – with the modification of changing 50% to 49% - recommend to Town Meeting to approve.

The Motion passed 7-0.

IV. APPEARANCE

ZBA2008-00028, 740 Belchertown Road - Omnipoint Communications

Request for a Special Permit for a wireless communication facility under Section 3.340.2 of the Zoning Bylaw.

Mr. Hayden explained that the wireless communication facility is a tower that is proposed to be installed at the town-owned transfer station. Mr. Hayden noted that the Planning Board has no authority on this matter, but that the Board can make recommendations to the Zoning Board of Appeals if it so chooses. Mr. Suarez suggested that the Board members refer to Section 3.340 of the Zoning Bylaw to see the conditions that are required for a Special Permit to be issued for such a facility.

Simon Brighenti, the attorney for Omnipoint, gave a presentation about the proposed installation. He explained that Omnipoint Communications is part of the company known as T-Mobile. He introduced Paul Dethier from the Town of Amherst Department of Public Works (DPW), who was also in attendance. Mr. Brighenti explained that the DPW had a Special Permit to operate the transfer station and the Special Permit would need to be modified to include a wireless communications tower.

Mr. Brighenti stated that the Federal Communications Act of 1996 was intended to strike a balance between local and federal regulations. It was also intended to promote competition among communications companies. Mr. Brighenti referred to other local sites where Omnipoint has installed facilities or has received permits to install facilities. He noted that Omnipoint has applied for a Special Permit from the Zoning Board of Appeals and has submitted photo-simulations to determine from what points in town the tower will be seen.

Mr. Brighenti explained the operations of the transfer station and stated that Omnipoint will lease a 50 foot x 50 foot site, within the transfer station, from the town, for purposes of locating the tower and associated equipment. The tower will be located behind an existing mound, which will help to hide the equipment. The tower and accompanying equipment will be surrounded by a fence. The tower is proposed to be 150 feet tall. There will be cabinets at the base of the pole. There will be a space on the pole, below the Omnipoint antennas for co-location by other carriers. There will be a GPS and GSM antenna for the E911 system. Sixty percent (60%) of the calls to E911 are made from hand-held telecommunications devices. A caller will be able to be tracked by GPS for location in emergencies. The installation will be a passive use, with no employees stationed on-site. It will be monitored 24 hours a day, 7 days a week from off-site. The installation is "over-designed" for floods, hurricanes and winds. Once a month, a maintenance technician will come to inspect the site, arriving in a small truck. Only police, safety and T-Mobile employees will have access to the installation. There will be climbing pegs on the tower that will be removed up to a certain height when not in use, to prevent people from climbing the pole. Intruders will be able to be detected.

Ms. Anderson asked about the amount of revenue that will be paid to the Town annually for this installation. Mr. Brighenti estimated that the amount would be likely to be between \$1,000 and \$1,800 per month. He noted that the co-locators, if any, would also pay the Town. He promised to provide the information on payments to the Town at the ZBA hearing.

Ms. Anderson asked about the links between cell phone use and brain cancer. She asked what kinds of emissions would be produced by the installation.

Mr. Brighenti stated that these facilities are regulated by the FAA and the FCC. The FCC provides emissions guidelines, which are available at www.FCC.gov. The FCC sets a ceiling on radiofrequency emissions. Usually these installations produce about 2% to 3% of the ceiling amount allowed by the FCC. He explained that it is a "non-ionizing" type of radiation and that it is 150 feet up in the air, far from individuals on the ground. He stated that the telecommunications companies used to have to provide power density studies to permit-granting authorities, but now the state does not require these studies because the installations are so far below the range that is considered to be a problem.

Mr. Suarez reminded the Planning Board that it was up to the ZBA to approve this installation.

Ms. Anderson left at 9:12 p.m.

Mr. Suarez asked about the methane co-generation plant at the transfer station and why it was not generating electricity. He also asked how long the methane will burn.

Mr. Dethier stated that he didn't know the answers to these questions.

Mr. Suarez stated that the Town needs to make a decision regarding the co-generation plant.

Carolyn Holstein, the Planning Department's staff-liaison to the Zoning Board of Appeals, stated that she had previously worked as the recycling coordinator for the DPW and that there had been a plan to generate electricity and give it to the "grid". Opposition from neighbors kept this idea from becoming a reality. She also noted that the cost was prohibitive. She noted that the criteria for granting a Special Permit do not include financial considerations.

Mr. Suarez stated that the Town needs to better utilize the Town's facilities.

Ms. Barberet asked if the tower will be visible to people coming over the hill on Route 9 from Belchertown, heading west.

Mr. Brighenti stated that he does not know yet, but that the Zoning Bylaw requires that 8 photographs be submitted to the ZBA. He noted that there will be a balloon raised to the height of the proposed tower and that Omnipoint is planning to provide at least 12 to 15 photographs of the balloon in place to indicate whether the top of the tower will be seen from various locations in town.

Ms. Holstein noted that there is a Verizon installation at Amherst College, on the smoke stack at the power plant. Mr. Brighenti noted that a gap exists in T-Mobile's service that will be filled by the proposed tower installation.

Mr. Suarez asked if the ZBA approves the telecommunications tower and the co-generation plant becomes operational, will there be a conflict between the two uses.

Mr. Brighenti stated that the only conflicts that are usually a problem with the telecommunications facilities are other uses that rely on radio frequencies.

Mr. Hayden asked about lights on the tower. Mr. Brighenti stated that there would be no lights on the tower, but that there will be a security light at the base. This tower would only be required to have a light at the top if it were over 200 feet tall.

Mr. Hayden asked about provisions for amateur radio operators. Mr. Brighenti stated that this may be possible. There will be no guy wires. The tower will operate in the 1800 to 2100 megahertz range.

Mr. Suarez left at 9:23 p.m.

Mr. Hayden noted that the WTTT radio towers are located across the road.

Ms. Holstein stated that the new installation is proposed to be 25 feet higher than what the Bylaw allows. She asked why Omnipoint was asking for the extra 25 feet.

Mr. Brighenti stated that the extra 25 feet would give them the best signal and allow them to maximize co-location. Mr. Brighenti noted that the Town is welcome to co-locate on the tower. T-Mobile will install equipment for the Town.

Mr. Hayden asked the Planning Board members if they would like to make a recommendation to the ZBA.

Ms. Barberet stated that there were lots of technical issues involved. The Board did not make a recommendation to the ZBA

Mr. Brighenti noted that the ZBA would be holding a public hearing in May and that there would be a balloon flown and photographs taken prior to the public hearing.

Ms. Holstein noted that the landfill blocks the view to a large degree.

V. NEW BUSINESS

A. Lot Release Request – Lot 30, Linden Ridge Road, Tofino Associates, Inc.

Mr. Tucker explained that there was a request for the release of Lot 30 on Linden Ridge Road. He stated that all of the utilities have been installed and that staff recommend the release of this lot. Less than half of the 66 lots in the subdivision have been released to date.

Mr. Howland MOVED: to approve the release of Lot 30. Mr. O'Keeffe seconded and the motion passed 5-0.

B. Final Warrant Review

Mr. Tucker explained a change to Article 27, the Warrant Article dealing with the Municipal Parking District. The change had to do with discussion that had occurred with the Select Board about a possible legal issue regarding the public assuming responsibility for adequate parking in the downtown area. Mr. Tucker read the revised language for Article 27.

It is the policy of the Town of Amherst to encourage dense multi-use development in its Town Center. Toward that end, provision of off-street parking is not required for selected uses within the MP District.

Mr. Howland MOVED: to approve the revised language.

Ms. Barberet asked a question to clarify her understanding of the new language. Mr. Tucker clarified the wording.

Mr. O'Keeffe seconded and the motion passed 5-0.

I. MINUTES – April 2, 2008

Mr. Howland MOVED: to approve the Minutes. Mr. O'Keeffe seconded.

Ms. Barberet and Mr. O'Keeffe offered the following corrections:

Page 1, in the line listing those who were absent, "Katherine Anderson" should read "Kathleen Anderson";

Page 3, under A-19-08 Inclusionary Zoning (Planning Board), line 17, "h" should read "he"; Page 5, line 3, "Mr. John Divine" should read "Mr. John Devine"; line 18, add the word "are" after the word "there";

Page 6, under B. Community Preservation Act Committee, add the following sentence to the end of that section:

"A vote was taken on a recommendation to purchase lots in front of the former Boys and Girls Club. The vote (2-2) failed because a majority had not been reached. It will be revoted at the next meeting, she said.

The Motion passed 5-0.

V. NEW BUSINESS

C. Upcoming Meeting Schedule

Mr. Tucker noted that there would be meetings as follows:

Wednesday, May 7 – So far the agenda for this meeting is not full; Tuesday, May 20th – The agenda for this meeting includes a continuation of a public hearing.

Mr. O'Keeffe asked if there would be a need to meet before Town Meeting sessions. Mr. Tucker stated that no last-minute public hearings were needed at this time.

Mr. Hayden noted, for the benefit of fellow Town Meeting members who will be Movers and Speakers for various Warrant Articles, that he would not be in town on June 2nd, in case there is a Town Meeting scheduled for that night. Mr. O'Keeffe noted that he has a scheduling conflict for the Town Meeting night of May 12th.

Mr. Shefftz left at 9:40 p.m. and a quorum was no longer present.

XIV. ADJOURNMENT

The meeting adjourned at 9:40 p.m. due to a lack of a quorum.		
Respectfully submitted:		
Christine M. Brestrup, Senior Planner		
Approved:		
Aaron A. Hayden, Chair	DATE:	